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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

B5

Date:

JUN 18 2012

Office: NEBRASKA SERVICE CENTER

IN RE:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the immigrant visa petition. The petitioner appealed this denial to the Administrative Appeals Office (AAO), and, on September 22, 2010, the AAO dismissed the appeal. Counsel filed a motion to reopen and a motion to reconsider (MTR) the AAO's decision in accordance with 8 C.F.R. § 103.5. The motion will be dismissed.

In order to properly file a motion, the regulation at 8 C.F.R. § 103.5 provides that the affected party or the attorney or representative of record must file the complete motion within 30 days of service of the unfavorable decision. If the decision was mailed, the motion must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). The date of filing is not the date of mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i). A motion to reopen may be filed after the deadline if the delay was reasonable and beyond the control of the petitioner. 8 C.F.R. § 103.5.

The record indicates that the AAO issued the decision on September 22, 2010. It is noted that the AAO properly gave notice to the petitioner that it had 30 days to file the motion with the office that originally decided the case. Neither the Immigration and Nationality Act nor the pertinent regulations grant the AAO authority to extend this time limit.

Although counsel dated the Form I-290B October 20, 2010, it was not received by the service center until October 28, 2010, or 36 days after the decision was issued. Accordingly, the motion was untimely filed. The petitioner's erroneous submission of the motion directly to the AAO on October 22, 2010 did not retain a receipt date. 8 C.F.R. § 103.2.

As the motion was untimely filed, the motion must be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion is dismissed.